



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,310	12/18/2001	David Ross Mathog		8215

7590 04/26/2006

David Ross Mathog
1215 Greenfield Avenue
Arcadia, CA 91006

EXAMINER

WILLIAMS, ROSS A

ART UNIT PAPER NUMBER

3713

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/025,310		MATHOG, DAVID ROSS	
	Examiner		Art Unit	
	Ross A. Williams		3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 37, 38, 44 – 50 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Elstein et al. (US 4,702,475).

Regarding claim 37, Elstein et al discloses a sports training system, wherein the device consists of: a case 126, a plurality of lamps that are connected to the surface of the case wherein the lamps 112, 114, 116, 118, 120 and 122, light up thereby issuing a signal to the athlete (9:23 – 35). Each lamp lights up, thereby emitting a signal in an ON state and does not emit a signal while in the OFF state. The system also utilizes a microprocessor to control the operation of the system (11:27 – 29). One way the system can be used to train an athlete is by sequentially causing the lamps to emit signals (9:30 – 35) or can introduce a sequence of unpredictable signals (11:56 – 69). Thus, introducing variation into the system to better train athletes.

Regarding claim 38, as can be seen in Figs 1, 3, 4 and 6, the device is used in the playing of athletic activities. Thus, the device is made out of durable materials appropriate for athletic activities.

Regarding claim 44, Elstein et al. discloses a controller in the form of a microprocessor (11:27 – 29).

Regarding claim 45, Elstein et al. discloses signals that represent device states emitting from lamps. Elstein et al. further discloses that these signals emitted from the lamps can be combinations of lamp signals that also represent device states to indicate different actions the user or athlete must take. Elstein et al. discloses that these signals can be emitted in a random manner (9:56 – 68).

Regarding claims 46, 47 and 50, Elstein et al. discloses that the device can utilize memory cartridges with pre-stored drill routines. The pre-stored drill routines have various routines wherein the routine have various light patterns, different individual time periods of response for each light as well as different pause duration periods. The pause duration periods are periods at the end of the response period and the beginning of the next individual response period. (4:34 – 51). It is further disclosed that the device has a keypad or dial wherein the user can input or adjust different time periods of response (4:63 – 5:11).

Regarding claim 48, Elstein et al. discloses that a cyclic switch can selectively as well as sequentially energize the lamps thereby creating sequential device states for the athlete (9:30 – 39). It is also disclosed that one of the objects of Elstein et al's invention is to emit signal by means of the lamps in a random pattern for the athlete (Abstract).

Regarding claim 49, as discussed above Elstein et al. discloses that a keypad can be used to input the transition frequencies of the periods of response times (4:68 – 5:11). Elstein et al. also discloses that the cyclic switch can select device states in a sequential manner as well as a selective manner (9:36 – 39). It is disclosed that one of the objects of Elstein et al's invention is to emit signal by means of the lamps in a

Art Unit: 3713

random pattern for the athlete (Abstract). Thus in order for the invention to operate in a random manner then the device would then be operating in a selective manner as well.

Regarding claim 52, Elstein et al. discloses a controlling means to control the transitions of device states (11:27 – 29), a setting means of switches and dials to set the parameters in regards to order and timings of the transitions between device states, wherein the parameters are read in by the control means (11:49 – 59), a signaling means controlled by the control means (11:15 – 26), wherein this signaling means allows the user to distinguish between device states (9:56 – 69), and wherein the signals are presented in random unpredictable manner (Abstract).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 39, 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elstein et al. as applied to claim 37 above, and in view of Chein (US 5,469,342).

Regarding claims 39 and 40, Elstein et al discloses the shape of the case of the signaling device as well as the positioning of the lights, as shown in Figures 1, 3, and 4. Elstein does not disclose that the shape of the case is conical, or that the signal emitting elements are disposed in rings upon the outer surface of the case. Chein discloses a

light signaling apparatus wherein the signaling elements are disposed in rings on the surface of the case and also wherein the case is conical in shape (Chein Fig 5).

One of ordinary skill in art would be motivated to modify Elstein et al in view of Chein to provide a light signaling means wherein the lights are in the shape of rings upon the surface of a conical shaped case. The usage of alternatives housings and displays would be obvious to a skilled artisan who would be motivated by the wants, needs, and desires for their system defined by the specification of usage. The change in structure would not serve to alter the performance of the device and thus would be obvious. The motivation for having the signaling elements disposed upon the surface of the case in rings would be to provide the athlete with a clear view of the signal. A ring of lights would provide a view of the signal from all angles (360 degrees) regardless of where the athlete is standing.

Claims 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elstein et al (US 4,702,475) as applied to claim 37, and in view of Karrenberg (US 4,949,320).

Regarding claim 41, Elstein et al. does not disclose the first and second signal lights being of different colors. Karrenberg discloses a signaling device used for sports training in particular interval training, wherein the device comprises sets of differently colored LEDs (Karrenberg 4:11 – 16). As shown in Karrenberg different colored lights can be used to let the athlete know what clock interval is presently running (Karrenberg 4:11 – 16).

It would be obvious to one of ordinary skill in the art to modify Elstein et al. in view of Karrenberg to provide signaling lights of different colors. Different colors of lights will let the athlete easily discern what clock interval they are presently in or what action they must take.

Regarding claim 43, Elstein et al discloses a training device wherein multiple signals are emitted for the athlete to respond to. Elstein discloses that is powered by a power supply, is connectable to any convenient source of electricity through a line plug (Elstein et al 9:29 – 31). Elstein does not explicitly disclose that a removable battery powers the device. Karrenberg discloses a sports-training timer device wherein the power source is a battery (Karrenberg 4:44 – 65).

It would be obvious to one of ordinary skill in the art to modify Elstein et al. in view of Karrenberg to provide a removable battery so that the device may be powered. A removable battery is indeed a convenient power source. The motivation for using a removable battery would be to make the device more portable in that it can be used in a variety of different location that may not have a permanent electricity source.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elstein et al (US 4,702,475) as applied to claim 37, and in view of Boland (US 5,921,896).

Regarding claim 42, Elstein et al. discloses the training device as discussed above referring to claim 37. Elstein et al. does not disclose LED's that are activated to signal the device states. Boland discloses a sport-training device that signals an athlete

by means of LED's to different device states (Boland 5:63 – 6:2). The purpose of LED's in Boland are to signal an athlete as to a device state where they must react in an appropriate manner thereby improving reaction times and skill in that particular sport.

It would be obvious to one of ordinary skill in the art to modify Elstein et al. in view of Boland to incorporate LED's as the signaling means for an athlete. LED's are known to provide an economical means of light while still providing a maximum amount of light.

Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elstein et al (US 4,702,475).

Regarding claim 51, Elstein et al discloses a sports-training device wherein the device emits signals to the athlete. Elstein et al discloses two embodiments wherein one embodiment has 3 lamps representing device states (Elstein Fig 1) and another embodiment wherein there are 6 lamps representing device states (Elstein Figs 3 and 4). It is also discloses that combinations of these lamps can indicate other states as well (Elstein 9:56 – 68).

It would be obvious in view of Elstein to provide 4 states that represent multiple device state, wherein the device states represent different actions the user must take. It would be an obvious modification to one of ordinary skill in the art to specify four device states instead of 3 or more devices states as Elstein et al shows his device to be fully capable of signaling.

Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elstein et al (US 4,702,475) in view of Boland (US 5,921,896) and further in view of Karrenberg (US 4,949,320).

Regarding claim 53, Elstein et al. discloses the training device as discussed above referring to claim 52. Elstein et al. does not disclose a set of red and blue LED's that are activated to signal the device states. Boland discloses a sport-training device that signals an athlete by means of LED's to different device states (Boland 5:63 – 6:2). The purpose of LED's in Boland's disclosure are to signal an athlete as to a device state where they must react in an appropriate manner thereby improving reaction times and skill in that particular sport. Karrenberg discloses a signaling device used for sports training, particularly interval training, wherein the device comprises sets of differently colored LEDS (Karrenberg 4:11 – 16).

It would be obvious to one of ordinary skill in the art to modify Elstein et al. in view of Boland and in further view of Karrenberg to incorporate LED's as the signaling means for an athlete. LED's are known to provide an economical means of light while still providing a maximum amount of light. It would also be obvious to modify the colors of the LED's or lamps to include the colors red and blue. As shown in Karrenberg different colored lights can be used to let the athlete know what clock interval is presently running (Karrenberg 4:11 – 16).

Response to Arguments

Applicant's arguments filed 1/24/2006 have been fully considered but they are not persuasive.

The Applicant states that there are major differences between Elstein and the Applicant's application with respect to intended use and implementation.

1. Regarding the assertion that *"1) the device of Elstein is a reaction training device used to indicate which discrete action an athlete is to perform in response to its signals (Abstract), each such action having a "start" and an "end" (Abstract), whereas the device of the present application is freely running and the signals it produces do not indicate the start or end of a discrete activity but rather changes in the athletic environment to which the athlete responds during an activity."* The Examiner respectfully disagrees. The applicants claimed invention states the limitations of "ON" states wherein a signal is emitted and "OFF" states wherein a signal is not emitted. Thus the claimed invention does indeed indicate the start and end of a discrete activity. The device of Elstein is directed to a device wherein a player can engage in a game training activity. *During* the activity a user is presented with a plurality of signals that represent many different actions the user must perform *during the training activity*.
2. In response to applicant's argument that *"2) the device of Elstein is solely a training' device, whereas the device of the present application is also designed to be used during an athletic game or contest, and so consequently is freely running, signals omni directionally, and requires no user interaction once it has*

been configured and turned on", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

3. Regarding the assertion that *"3) the device of Elstein contains a required element which emits a distinct signal to indicate the end of each activity (Abstract, 4:5-12), whereas the device of the present application lacks this element as it does not produce an "end" signal since its states do not indicate a discrete activity that "begins" and "ends".*" The Examiner directs the Applicant to what the claimed invention states in Claim 37. Specifically signaling elements for emitting a signal, wherein the signal has an on state and an off state. When the signal element emits the "on" state signal the user or is directed to perform the activity, and when the signal is in the "off" state the user is effectively signaled that the end of that discrete activity has ended.
4. Regarding the assertion that *"4) the device of Elstein incorporates a required trigger element that initiates the training drill (8:34-37, 9:14-20, 10:29-32), whereas the device of the present application has no need for this element and so omits it."* The Examiner directs attention to the limitations of the claimed invention are in Claim 37. Claim 37 does not support this assertion.

5. Regarding the assertion that *"5) some implementations of the device of Elstein contain one or more required trigger elements that time the response of the athlete to that signal (Abstract, 10:29-32, 12:12-17), whereas the device of the present application omits this element as for its intended use there are no discrete reactions to time."* The Examiner directs attention to the tennis drill (Elstein 10:1 – 32). In this tennis drill a player has to perform actions in accordance with the signal states. The purpose of this is so the player practices specific actions for that sport. An added function to the device is that is also times the reaction time of the player/user.

6. Regarding the assertion that *"6) the device of Elstein implements a "pause" period (3:65-67, 12:67-68) following the "end" signal to allow the athlete to reposition on the field back to a start position, whereas the device of the present application neither implements nor requires such a "pause" since its states do not indicate a discrete activity that "begins" or "ends"."* The Examiner respectfully disagrees. In the above tennis drill example (Elstein 10:1 – 32), "pause" states are not utilized in the activity. It should also be noticed that even in the Applicants stated invention, due to the fact that signaling elements are transitioning from "ON" and "OFF" states, there inherently has to be a momentary wait state, however small and minute" where a signal is not emitted.

7. Regarding the assertion that *"(7) the device of Elstein uses a fixed duration (Abstract, 10:63-65, 13:1-9) for each state in a drill, whereas the device of the present application can randomly vary the duration of each state."* The examiner respectfully disagrees. The Examiner directs attention to columns 4:1- 12, 34 – 51 of Elstein, which state that different lights can have different time period of duration, thus presenting lights of random durations.

8. Regarding the assertion that *"(8) the randomness produced by the device of Elstein subsequent to the initial trigger (23:48-57) is weak and so an athlete who ran the same drill repeatedly would eventually be able to predict with some accuracy the next state based upon those that preceded it This is most evident for a drill with a simple pattern like 123456123456, but the principal applies for all fixed patterns with random starts), as well as the exact time the next signal would appear (since the current state completely determines that), whereas the order and duration of states presented by the device of the present application is randomly selected at each transition to the next state, and so is unpredictable from observations of the preceding states."* The Examiner respectfully disagrees. Elstein specifically states that the signals emitted will appear to be random to the user, as well as in some cases a repetitive signal is preferred (Elstein 3:30 – 38). Thus the signaling results will be random and the user/player will not be able to predict the state sequences.

9. In response to applicant's argument that *"it is important to recognize that prior art cited by the present and previous examiners falls into two general classes: reaction training devices (as in Elstein) and interval training devices (as in Karrenberg)...* The device of the present application introduces continuous variation into the training of athletes and the playing of athletic games". A

recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

10. Regarding the Applicant's assertion that *"the device of Elstein the state signal need only be recognized by the athlete from the "start position" at the start of a reaction, as this signal will not change during that reaction and so need not be seen again."* The Applicant is directed to the tennis drill routine as discussed above as found on column 10:1 – 32 of Elstein. The user/player is directed to a plurality of sequential areas of the court as signaled by the signaling elements of the training device. The player sequentially moves to the next area without going back to a start area.

11. Regarding the Applicant's assertion that *"the device is to be used in the playing of athletic activities."* The language of claim 38 limits the claim to "athletic activity". Obviously a training regimen is an athletic activity. Furthermore, some

individual actually view training activities as a game wherein they compete against themselves for better scores, times, etc.

12. Regarding the Applicant's assertion that *"However, throughout Elstein teaches exactly the opposite, that only one light at a time is activated (abstract, 3:56-58, 3:65, 4:1, etc). Moreover, basic user interface design principals would be violated by a device which signaled states though all combinations of 6 discrete lamps, since the resulting 36 combinations would represent a command table too complex for the average player to respond to in real time. The device of Elstein is a reaction training system so Elstein did not burden the athlete with a complex interpretation step before reacting to the command. Elstein's choice of 6 different signal lamps, on the other hand, is consistent with good user interface design since most people can keep that small number of different bits of information in their short term memory and so respond quickly and appropriately to whichever single lamp is lit."* The Examiner respectfully disagrees. Elstein specifically provides for a combination of lamp patterns that represent further signals. Elstein states that elevation or jumping patterns can be represented by a combination of lamp energizations. Elstein describes various motion patterns that the signal lamps can represent during a training activity. Thus it is obvious that jumping or elevation patterns, represented by combinations of lights, represent different types of user motion patterns.

13. Regarding the Applicant's assertions to the rejection of Claim 48 that *"the applicant submits that Elstein actually describes no mechanism for lighting these lamps sequentially. In the cited text it says "sequentially completes the energizing circuits of these lamps" but in the very next sentence says "such lamps will remain in an unlit condition" (until triggered)." As well as the argument stating "Therefore the applicant submits that, since the device of Elstein cannot be configured to reliably emit states in sequence, that Claim 48 is valid."* The Examiner respectfully disagrees. Regardless of there being a wait state, the signal lamps are still going to be activated in a sequence of signals. Even in the event that the signals are emitted in a random pattern, that random pattern is still a sequence of states, thus yielding a sequential pattern of states.

14. Regarding the Applicant's assertions to the rejection of Claim 49 that *"The applicant submits that the device of Elstein has no feature corresponding to rate of transitions randomly varying around a mean frequency". The timing of transitions in the device of Elstein are fixed by the on time of each lamp (13:1-9) and the pause interval (12:67-68), which themselves do not vary during the device's operation."* The Examiner directs the Applicant's attention to the wording of the claim language. The claimed language only requires one of the limitations to be met, such as the "rate of transitions to be fixed".

15. Regarding the Applicant's assertions to the rejection of Claim 49 that *"Therefore the applicant submits that, since the device of Elstein cannot be configured to reliably emit states in sequence, that Claim 49 is valid.* The Examiner directs the Applicant's attention to claim 49 due to the fact that the claim does not provide a limitation for emitting states in a sequence.

16. Regarding the Applicant's assertions to the rejection of Claim 52 that *"1) in (b), this at least partly random in order or timing', whereas randomness in timing is not provided by the device of Elstein', 2) in (c), "said signal is unpredictable by an observer" is true for both order and timing,' whereas for the device of Elstein it is (weakly) true for order and not true for timing; 3) in the whereby clause following (c) "continuously introducing unpredictable variation" distinguishes from the device of Elstein which requires a return to starting position" pause during which no variation will be introduced, and so the device of Elstein does not variation continuously; 4) the absence of the required trigger elements) of the device of Elstein; and 5) the absence of the required "end" signal element of the device of Elstein. Therefore the applicant submits that Claim 52 is valid".* The Examiner directs attention to the claim language in that the language only requires a factor of randomness in order *or* timing. Thus Elstein meets the claimed limitation of random order. The athletic activity of Elstein is continuous in that even though a trigger *may* be utilized in starting the activity the device continuously emits

signals that direct the player to perform athletic actions. The device continuously emits signals over the length of the training activity, until the player turns off.

17. Regarding the Applicant's assertions to the rejection of Claim 39 and 40 that *"Therefore there would be no reason to extend the device of Elstein to provide omni directional viewing since the athlete would always initially view its signal from the same position."* The examiner once again directs the Applicant's direction to the tennis drill example as discussed above and in column 10, line 1 – 32 of Elstein. The player will progress through the regimen and move in correspondence with the signal lamps to different areas of the court as directed by the lamps. Since the does not have to go back to a single start position, the user would benefit from an omni directional light.

18. Regarding the Applicant's assertions to the rejection of Claim 41 that *"Since there is no possibility of "signal confusion" in the device of Elstein there exists no reason for one skilled in the arts to extend the device by coloring the lights to eliminate this nonexistent problem. Moreover, if the lights were colored for some other reason (aesthetics perhaps) doing so would not be sufficient to cause the device of Elstein to function as does the device of the present application. Therefore, the applicant submits that Claim 41 is valid."* The Examiner respectfully disagrees. A simple traffic light that has three lights that represent different states such as green, amber, and red, representing go, slow down, and

stop, can be used to illustrate the effectiveness of a different colored light signals that are view by motorists from a *single* position in the road. It is well known that colors are useful in representing states of actions. If all the traffic lights are of the same color then a motorist may get confused as to which state of action is being signaled. The same logic can be applied to Elstein in view of Karrenberg. Different colored lights in Karrenberg represent different time intervals that a player can grasp just by observing the color. Thus the use of different colored lamps would be effective in the communication of the signal emitted by the device of Elstein.

19. Regarding the Applicant's assertions to the rejection of Claim 42, that *"It would certainly be possible to modify the lights of the device of Elstein to utilize LEDS as in Boland (and many, many other devices), however doing so would not be sufficient to cause the device of Elstein to function as does the device of the present application."* Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

20. Regarding the Applicant's assertions to the rejection of Claim 51, please refer to paragraph number 12 of "Response to Arguments".

21. Regarding the Applicant's assertions to the rejection of Claim 53, please refer to paragraph number 19 of "Response to Arguments".

Conclusion

This is a RCE of applicant's earlier Application No. 10/025,310. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ross A. Williams whose telephone number is (571) 272-5911. The examiner can normally be reached on Mon-Fri 8:30-5:00.

Art Unit: 3713

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAW
RAW
4/20/06


XUAN M. THAI
SUPERVISORY PATENT EXAMINER
TC3700